



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

REED INTELLECTUAL PROPERTY LAW GROUP
800 MENLO AVE
SUITE 210
MENLO PARK CA 94025

COPY MAILED

MAR 15 2005

OFFICE OF PETITIONS

In re Application :
Ronald E. Pelrine, et al. :
Application No. 10/066,407 : DECISION ON PATENT TERM
Filed: January 31, 2002 : ADJUSTMENT
Attorney Docket No. 8500-0267 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed May 17, 2004, requesting correction of the patent term adjustment (PTA) indicated on the patent from seventy-five (75) days to one hundred forty-seven (147) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred forty-seven (147) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 18, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is seventy-five (75) days. On May 17, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one hundred forty-seven (147) days.

Applicants assert entitlement to a patent term adjustment of one hundred forty-seven (147) days on the basis that the PTO improperly assessed Applicants a delay of seventy-two (72) days for filing an Information Disclosure Statement (IDS) on January 23, 2004, after Applicants had filed a response on November 12, 2003.

Applicants fail to state whether the patent issuing from the application is subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of seventy-five (75) days based on an adjustment for PTO delay of one hundred forty-seven (147) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delay of seventy-two (72) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The adjustment of 72 days is at issue.

A review of the application file reveals that the IDS filed on January 23, 2004, was a copy of an IDS filed on April 29, 2002. Furthermore, the IDS contained a transmittal letter, stating that it was being filed in response to a telephone message from the Examiner left on that same day.

In view of the above, it is concluded that the IDS filed on January 23, 2004 was a copy of an IDS previously filed on April 29, 2002 and was expressly requested by the Examiner. As such, no applicant delay should have been assessed.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **one hundred forty-seven (147) days** (147 days of PTO delay and 0 days of applicant delay).

Receipt of the \$200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

¹ Applicants filed the application for patent term adjustment prior to the filing of the issue fee.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy